

AMENDED IN SENATE APRIL 16, 2009

SENATE BILL

No. 150

Introduced by Senator Wright

February 12, 2009

An act to amend, *repeal, and add* Sections 186.22, 186.33, 1170.1, 12021.5, 12022.2, and 12022.4 of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

SB 150, as amended, Wright. Sentencing.

Existing law provides that most felonies are punishable by a triad of terms of incarceration in the state prison, comprised of low, middle, and upper terms. Previous law that required the court to impose the middle term, unless there were circumstances in aggravation or mitigation of the crime, was amended to provide that the choice of the appropriate term rests within the sound discretion of the court. Existing provisions related to sentence enhancements involving criminal street gang activity, firearms, and sentencing generally specify that the court shall impose the middle term of a triad of sentence enhancements unless there are circumstances in aggravation or mitigation of the crime.

This bill would delete the requirement that the court impose the middle term, as specified, from those provisions *and instead provide that the court, in its discretion, impose the enhancement that best serves the interests of justice. This bill would provide that these changes would be repealed on January 1, 2011.*

This bill would amend Proposition 21, an initiative statute adopted by the voters at the March 7, 2000, Statewide Primary Election that provides that its provisions may be amended by the Legislature by a $\frac{2}{3}$ vote of the membership of each house, and therefore requires a $\frac{2}{3}$ vote.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 186.22 of the Penal Code is amended to
2 read:
3 186.22. (a) Any person who actively participates in any
4 criminal street gang with knowledge that its members engage in
5 or have engaged in a pattern of criminal gang activity, and who
6 willfully promotes, furthers, or assists in any felonious criminal
7 conduct by members of that gang, shall be punished by
8 imprisonment in a county jail for a period not to exceed one year,
9 or by imprisonment in the state prison for 16 months, or two or
10 three years.
11 (b) (1) Except as provided in paragraphs (4) and (5), any person
12 who is convicted of a felony committed for the benefit of, at the
13 direction of, or in association with any criminal street gang, with
14 the specific intent to promote, further, or assist in any criminal
15 conduct by gang members, shall, upon conviction of that felony,
16 in addition and consecutive to the punishment prescribed for the
17 felony or attempted felony of which he or she has been convicted,
18 be punished as follows:
19 (A) Except as provided in subparagraphs (B) and (C), the person
20 shall be punished by an additional term of two, three, or four years
21 at the court's discretion.
22 (B) If the felony is a serious felony, as defined in subdivision
23 (c) of Section 1192.7, the person shall be punished by an additional
24 term of five years.
25 (C) If the felony is a violent felony, as defined in subdivision
26 (c) of Section 667.5, the person shall be punished by an additional
27 term of 10 years.
28 (2) If the underlying felony described in paragraph (1) is
29 committed on the grounds of, or within 1,000 feet of, a public or
30 private elementary, vocational, junior high, or high school, during
31 hours in which the facility is open for classes or school-related
32 programs or when minors are using the facility, that fact shall be
33 a circumstance in aggravation of the crime in imposing a term
34 under paragraph (1).

1 (3) The court shall *select the sentence enhancement which, in*
2 *the court's discretion, best serves the interests of justice and shall*
3 *state the reasons for its choice of sentencing enhancements on the*
4 *record at the time of the sentencing in accordance with the*
5 *provisions of subdivision (d) of Section 1170.1.*

6 (4) Any person who is convicted of a felony enumerated in this
7 paragraph committed for the benefit of, at the direction of, or in
8 association with any criminal street gang, with the specific intent
9 to promote, further, or assist in any criminal conduct by gang
10 members, shall, upon conviction of that felony, be sentenced to
11 an indeterminate term of life imprisonment with a minimum term
12 of the indeterminate sentence calculated as the greater of:

13 (A) The term determined by the court pursuant to Section 1170
14 for the underlying conviction, including any enhancement
15 applicable under Chapter 4.5 (commencing with Section 1170) of
16 Title 7 of Part 2, or any period prescribed by Section 3046, if the
17 felony is any of the offenses enumerated in subparagraph (B) or
18 (C) of this paragraph.

19 (B) Imprisonment in the state prison for 15 years, if the felony
20 is a home invasion robbery, in violation of subparagraph (A) of
21 paragraph (1) of subdivision (a) of Section 213; carjacking, as
22 defined in Section 215; a felony violation of Section 246; or a
23 violation of Section 12022.55.

24 (C) Imprisonment in the state prison for seven years, if the
25 felony is extortion, as defined in Section 519; or threats to victims
26 and witnesses, as defined in Section 136.1.

27 (5) Except as provided in paragraph (4), any person who violates
28 this subdivision in the commission of a felony punishable by
29 imprisonment in the state prison for life shall not be paroled until
30 a minimum of 15 calendar years have been served.

31 (c) If the court grants probation or suspends the execution of
32 sentence imposed upon the defendant for a violation of subdivision
33 (a), or in cases involving a true finding of the enhancement
34 enumerated in subdivision (b), the court shall require that the
35 defendant serve a minimum of 180 days in a county jail as a
36 condition thereof.

37 (d) Any person who is convicted of a public offense punishable
38 as a felony or a misdemeanor, which is committed for the benefit
39 of, at the direction of or in association with, any criminal street
40 gang with the specific intent to promote, further, or assist in any

1 criminal conduct by gang members, shall be punished by
2 imprisonment in the county jail not to exceed one year, or by
3 imprisonment in the state prison for one, two, or three years,
4 provided that any person sentenced to imprisonment in the county
5 jail shall be imprisoned for a period not to exceed one year, but
6 not less than 180 days, and shall not be eligible for release upon
7 completion of sentence, parole, or any other basis, until he or she
8 has served 180 days. If the court grants probation or suspends the
9 execution of sentence imposed upon the defendant, it shall require
10 as a condition thereof that the defendant serve 180 days in a county
11 jail.

12 (e) As used in this chapter, “pattern of criminal gang activity”
13 means the commission of, attempted commission of, conspiracy
14 to commit, or solicitation of, sustained juvenile petition for, or
15 conviction of two or more of the following offenses, provided at
16 least one of these offenses occurred after the effective date of this
17 chapter and the last of those offenses occurred within three years
18 after a prior offense, and the offenses were committed on separate
19 occasions, or by two or more persons:

20 (1) Assault with a deadly weapon or by means of force likely
21 to produce great bodily injury, as defined in Section 245.

22 (2) Robbery, as defined in Chapter 4 (commencing with Section
23 211) of Title 8 of Part 1.

24 (3) Unlawful homicide or manslaughter, as defined in Chapter
25 1 (commencing with Section 187) of Title 8 of Part 1.

26 (4) The sale, possession for sale, transportation, manufacture,
27 offer for sale, or offer to manufacture controlled substances as
28 defined in Sections 11054, 11055, 11056, 11057, and 11058 of
29 the Health and Safety Code.

30 (5) Shooting at an inhabited dwelling or occupied motor vehicle,
31 as defined in Section 246.

32 (6) Discharging or permitting the discharge of a firearm from
33 a motor vehicle, as defined in subdivisions (a) and (b) of Section
34 12034.

35 (7) Arson, as defined in Chapter 1 (commencing with Section
36 450) of Title 13.

37 (8) The intimidation of witnesses and victims, as defined in
38 Section 136.1.

39 (9) Grand theft, as defined in subdivision (a) or (c) of Section
40 487.

- 1 (10) Grand theft of any firearm, vehicle, trailer, or vessel.
- 2 (11) Burglary, as defined in Section 459.
- 3 (12) Rape, as defined in Section 261.
- 4 (13) Looting, as defined in Section 463.
- 5 (14) Money laundering, as defined in Section 186.10.
- 6 (15) Kidnapping, as defined in Section 207.
- 7 (16) Mayhem, as defined in Section 203.
- 8 (17) Aggravated mayhem, as defined in Section 205.
- 9 (18) Torture, as defined in Section 206.
- 10 (19) Felony extortion, as defined in Sections 518 and 520.
- 11 (20) Felony vandalism, as defined in paragraph (1) of
- 12 subdivision (b) of Section 594.
- 13 (21) Carjacking, as defined in Section 215.
- 14 (22) The sale, delivery, or transfer of a firearm, as defined in
- 15 Section 12072.
- 16 (23) Possession of a pistol, revolver, or other firearm capable
- 17 of being concealed upon the person in violation of paragraph (1)
- 18 of subdivision (a) of Section 12101.
- 19 (24) Threats to commit crimes resulting in death or great bodily
- 20 injury, as defined in Section 422.
- 21 (25) Theft and unlawful taking or driving of a vehicle, as defined
- 22 in Section 10851 of the Vehicle Code.
- 23 (26) Felony theft of an access card or account information, as
- 24 defined in Section 484e.
- 25 (27) Counterfeiting, designing, using, attempting to use an
- 26 access card, as defined in Section 484f.
- 27 (28) Felony fraudulent use of an access card or account
- 28 information, as defined in Section 484g.
- 29 (29) Unlawful use of personal identifying information to obtain
- 30 credit, goods, services, or medical information, as defined in
- 31 Section 530.5.
- 32 (30) Wrongfully obtaining Department of Motor Vehicles
- 33 documentation, as defined in Section 529.7.
- 34 (31) Prohibited possession of a firearm in violation of Section
- 35 12021.
- 36 (32) Carrying a concealed firearm in violation of Section 12025.
- 37 (33) Carrying a loaded firearm in violation of Section 12031.
- 38 (f) As used in this chapter, “criminal street gang” means any
- 39 ongoing organization, association, or group of three or more
- 40 persons, whether formal or informal, having as one of its primary

1 activities the commission of one or more of the criminal acts
2 enumerated in paragraphs (1) to (25), inclusive, or (31) to (33),
3 inclusive, of subdivision (e), having a common name or common
4 identifying sign or symbol, and whose members individually or
5 collectively engage in or have engaged in a pattern of criminal
6 gang activity.

7 (g) Notwithstanding any other law, the court may strike the
8 additional punishment for the enhancements provided in this
9 section or refuse to impose the minimum jail sentence for
10 misdemeanors in an unusual case where the interests of justice
11 would best be served, if the court specifies on the record and enters
12 into the minutes the circumstances indicating that the interests of
13 justice would best be served by that disposition.

14 (h) Notwithstanding any other provision of law, for each person
15 committed to the Division of Juvenile Facilities for a conviction
16 pursuant to subdivision (a) or (b) of this section, the offense shall
17 be deemed one for which the state shall pay the rate of 100 percent
18 of the per capita institutional cost of the Division of Juvenile
19 Facilities, pursuant to Section 912.5 of the Welfare and Institutions
20 Code.

21 (i) In order to secure a conviction or sustain a juvenile petition,
22 pursuant to subdivision (a) it is not necessary for the prosecution
23 to prove that the person devotes all, or a substantial part, of his or
24 her time or efforts to the criminal street gang, nor is it necessary
25 to prove that the person is a member of the criminal street gang.
26 Active participation in the criminal street gang is all that is
27 required.

28 (j) A pattern of gang activity may be shown by the commission
29 of one or more of the offenses enumerated in paragraphs (26) to
30 (30), inclusive, of subdivision (e), and the commission of one or
31 more of the offenses enumerated in paragraphs (1) to (25),
32 inclusive, or (31) to (33), inclusive of subdivision (e). A pattern
33 of gang activity cannot be established solely by proof of
34 commission of offenses enumerated in paragraphs (26) to (30),
35 inclusive, of subdivision (e), alone.

36 (k) *This section shall remain in effect only until January 1, 2011,*
37 *and as of that date is repealed, unless a later enacted statute, that*
38 *is enacted before January 1, 2011, deletes or extends that date.*

39 SEC. 2. Section 186.22 is added to the Penal Code, to read:

1 186.22. (a) Any person who actively participates in any
2 criminal street gang with knowledge that its members engage in
3 or have engaged in a pattern of criminal gang activity, and who
4 willfully promotes, furthers, or assists in any felonious criminal
5 conduct by members of that gang, shall be punished by
6 imprisonment in a county jail for a period not to exceed one year;
7 or by imprisonment in the state prison for 16 months, or two or
8 three years.

9 (b) (1) Except as provided in paragraphs (4) and (5), any
10 person who is convicted of a felony committed for the benefit of,
11 at the direction of, or in association with any criminal street gang,
12 with the specific intent to promote, further, or assist in any criminal
13 conduct by gang members, shall, upon conviction of that felony,
14 in addition and consecutive to the punishment prescribed for the
15 felony or attempted felony of which he or she has been convicted,
16 be punished as follows:

17 (A) Except as provided in subparagraphs (B) and (C), the person
18 shall be punished by an additional term of two, three, or four years
19 at the court's discretion.

20 (B) If the felony is a serious felony, as defined in subdivision
21 (c) of Section 1192.7, the person shall be punished by an additional
22 term of five years.

23 (C) If the felony is a violent felony, as defined in subdivision (c)
24 of Section 667.5, the person shall be punished by an additional
25 term of 10 years.

26 (2) If the underlying felony described in paragraph (1) is
27 committed on the grounds of, or within 1,000 feet of, a public or
28 private elementary, vocational, junior high, or high school, during
29 hours in which the facility is open for classes or school-related
30 programs or when minors are using the facility, that fact shall be
31 a circumstance in aggravation of the crime in imposing a term
32 under paragraph (1).

33 (3) The court shall order the imposition of the middle term of
34 the sentence enhancement, unless there are circumstances in
35 aggravation or mitigation. The court shall state the reasons for
36 its choice of sentencing enhancements on the record at the time
37 of the sentencing.

38 (4) Any person who is convicted of a felony enumerated in this
39 paragraph committed for the benefit of, at the direction of, or in
40 association with any criminal street gang, with the specific intent

1 to promote, further, or assist in any criminal conduct by gang
2 members, shall, upon conviction of that felony, be sentenced to an
3 indeterminate term of life imprisonment with a minimum term of
4 the indeterminate sentence calculated as the greater of:

5 (A) The term determined by the court pursuant to Section 1170
6 for the underlying conviction, including any enhancement
7 applicable under Chapter 4.5 (commencing with Section 1170) of
8 Title 7 of Part 2, or any period prescribed by Section 3046, if the
9 felony is any of the offenses enumerated in subparagraph (B) or
10 (C) of this paragraph.

11 (B) Imprisonment in the state prison for 15 years, if the felony
12 is a home invasion robbery, in violation of subparagraph (A) of
13 paragraph (1) of subdivision (a) of Section 213; carjacking, as
14 defined in Section 215; a felony violation of Section 246; or a
15 violation of Section 12022.55.

16 (C) Imprisonment in the state prison for seven years, if the felony
17 is extortion, as defined in Section 519; or threats to victims and
18 witnesses, as defined in Section 136.1.

19 (5) Except as provided in paragraph (4), any person who
20 violates this subdivision in the commission of a felony punishable
21 by imprisonment in the state prison for life shall not be paroled
22 until a minimum of 15 calendar years have been served.

23 (c) If the court grants probation or suspends the execution of
24 sentence imposed upon the defendant for a violation of subdivision
25 (a), or in cases involving a true finding of the enhancement
26 enumerated in subdivision (b), the court shall require that the
27 defendant serve a minimum of 180 days in a county jail as a
28 condition thereof.

29 (d) Any person who is convicted of a public offense punishable
30 as a felony or a misdemeanor, which is committed for the benefit
31 of, at the direction of or in association with, any criminal street
32 gang with the specific intent to promote, further, or assist in any
33 criminal conduct by gang members, shall be punished by
34 imprisonment in the county jail not to exceed one year, or by
35 imprisonment in the state prison for one, two, or three years,
36 provided that any person sentenced to imprisonment in the county
37 jail shall be imprisoned for a period not to exceed one year, but
38 not less than 180 days, and shall not be eligible for release upon
39 completion of sentence, parole, or any other basis, until he or she
40 has served 180 days. If the court grants probation or suspends the

1 *execution of sentence imposed upon the defendant, it shall require*
2 *as a condition thereof that the defendant serve 180 days in a county*
3 *jail.*

4 *(e) As used in this chapter, “pattern of criminal gang activity”*
5 *means the commission of, attempted commission of, conspiracy to*
6 *commit, or solicitation of, sustained juvenile petition for, or*
7 *conviction of two or more of the following offenses, provided at*
8 *least one of these offenses occurred after the effective date of this*
9 *chapter and the last of those offenses occurred within three years*
10 *after a prior offense, and the offenses were committed on separate*
11 *occasions, or by two or more persons:*

12 *(1) Assault with a deadly weapon or by means of force likely to*
13 *produce great bodily injury, as defined in Section 245.*

14 *(2) Robbery, as defined in Chapter 4 (commencing with Section*
15 *211) of Title 8 of Part 1.*

16 *(3) Unlawful homicide or manslaughter, as defined in Chapter*
17 *1 (commencing with Section 187) of Title 8 of Part 1.*

18 *(4) The sale, possession for sale, transportation, manufacture,*
19 *offer for sale, or offer to manufacture controlled substances as*
20 *defined in Sections 11054, 11055, 11056, 11057, and 11058 of the*
21 *Health and Safety Code.*

22 *(5) Shooting at an inhabited dwelling or occupied motor vehicle,*
23 *as defined in Section 246.*

24 *(6) Discharging or permitting the discharge of a firearm from*
25 *a motor vehicle, as defined in subdivisions (a) and (b) of Section*
26 *12034.*

27 *(7) Arson, as defined in Chapter 1 (commencing with Section*
28 *450) of Title 13.*

29 *(8) The intimidation of witnesses and victims, as defined in*
30 *Section 136.1.*

31 *(9) Grand theft, as defined in subdivision (a) or (c) of Section*
32 *487.*

33 *(10) Grand theft of any firearm, vehicle, trailer, or vessel.*

34 *(11) Burglary, as defined in Section 459.*

35 *(12) Rape, as defined in Section 261.*

36 *(13) Looting, as defined in Section 463.*

37 *(14) Money laundering, as defined in Section 186.10.*

38 *(15) Kidnapping, as defined in Section 207.*

39 *(16) Mayhem, as defined in Section 203.*

40 *(17) Aggravated mayhem, as defined in Section 205.*

- 1 (18) *Torture, as defined in Section 206.*
2 (19) *Felony extortion, as defined in Sections 518 and 520.*
3 (20) *Felony vandalism, as defined in paragraph (1) of*
4 *subdivision (b) of Section 594.*
5 (21) *Carjacking, as defined in Section 215.*
6 (22) *The sale, delivery, or transfer of a firearm, as defined in*
7 *Section 12072.*
8 (23) *Possession of a pistol, revolver, or other firearm capable*
9 *of being concealed upon the person in violation of paragraph (1)*
10 *of subdivision (a) of Section 12101.*
11 (24) *Threats to commit crimes resulting in death or great bodily*
12 *injury, as defined in Section 422.*
13 (25) *Theft and unlawful taking or driving of a vehicle, as defined*
14 *in Section 10851 of the Vehicle Code.*
15 (26) *Felony theft of an access card or account information, as*
16 *defined in Section 484e.*
17 (27) *Counterfeiting, designing, using, attempting to use an*
18 *access card, as defined in Section 484f.*
19 (28) *Felony fraudulent use of an access card or account*
20 *information, as defined in Section 484g.*
21 (29) *Unlawful use of personal identifying information to obtain*
22 *credit, goods, services, or medical information, as defined in*
23 *Section 530.5.*
24 (30) *Wrongfully obtaining Department of Motor Vehicles*
25 *documentation, as defined in Section 529.7.*
26 (31) *Prohibited possession of a firearm in violation of Section*
27 *12021.*
28 (32) *Carrying a concealed firearm in violation of Section 12025.*
29 (33) *Carrying a loaded firearm in violation of Section 12031.*
30 (f) *As used in this chapter, “criminal street gang” means any*
31 *ongoing organization, association, or group of three or more*
32 *persons, whether formal or informal, having as one of its primary*
33 *activities the commission of one or more of the criminal acts*
34 *enumerated in paragraphs (1) to (25), inclusive, or (31) to (33),*
35 *inclusive, of subdivision (e), having a common name or common*
36 *identifying sign or symbol, and whose members individually or*
37 *collectively engage in or have engaged in a pattern of criminal*
38 *gang activity.*
39 (g) *Notwithstanding any other law, the court may strike the*
40 *additional punishment for the enhancements provided in this*

1 *section or refuse to impose the minimum jail sentence for*
 2 *misdemeanors in an unusual case where the interests of justice*
 3 *would best be served, if the court specifies on the record and enters*
 4 *into the minutes the circumstances indicating that the interests of*
 5 *justice would best be served by that disposition.*

6 *(h) Notwithstanding any other provision of law, for each person*
 7 *committed to the Division of Juvenile Facilities for a conviction*
 8 *pursuant to subdivision (a) or (b) of this section, the offense shall*
 9 *be deemed one for which the state shall pay the rate of 100 percent*
 10 *of the per capita institutional cost of the Division of Juvenile*
 11 *Facilities, pursuant to Section 912.5 of the Welfare and Institutions*
 12 *Code.*

13 *(i) In order to secure a conviction or sustain a juvenile petition,*
 14 *pursuant to subdivision (a) it is not necessary for the prosecution*
 15 *to prove that the person devotes all, or a substantial part, of his*
 16 *or her time or efforts to the criminal street gang, nor is it necessary*
 17 *to prove that the person is a member of the criminal street gang.*
 18 *Active participation in the criminal street gang is all that is*
 19 *required.*

20 *(j) A pattern of gang activity may be shown by the commission*
 21 *of one or more of the offenses enumerated in paragraphs (26) to*
 22 *(30), inclusive, of subdivision (e), and the commission of one or*
 23 *more of the offenses enumerated in paragraphs (1) to (25),*
 24 *inclusive, or (31) to (33), inclusive of subdivision (e). A pattern of*
 25 *gang activity cannot be established solely by proof of commission*
 26 *of offenses enumerated in paragraphs (26) to (30), inclusive, of*
 27 *subdivision (e), alone.*

28 *(k) This section shall become operative on January 1, 2011.*

29 ~~SEC. 2.~~

30 SEC. 3. Section 186.33 of the Penal Code is amended to read:

31 186.33. (a) Any person required to register pursuant to Section
 32 186.30 who knowingly violates any of its provisions is guilty of
 33 a misdemeanor.

34 (b) (1) Any person who knowingly fails to register pursuant to
 35 Section 186.30 and is subsequently convicted of, or any person
 36 for whom a petition is subsequently sustained for a violation of,
 37 any of the offenses specified in Section 186.30, shall be punished
 38 by an additional term of imprisonment in the state prison for 16
 39 months, or 2, or 3 years. The court shall *select the sentence*
 40 *enhancement which, in the court's discretion, best serves the*

1 *interests of justice and shall state—its the reasons for—the*
2 *enhancement its choice on the record at the time of sentencing in*
3 *accordance with the provisions of subdivision (d) of Section 1170.1.*

4 (2) The existence of any fact bringing a person under this
5 subdivision shall be alleged in the information, indictment, or
6 petition, and be either admitted by the defendant or minor in open
7 court, or found to be true or not true by the trier of fact.

8 (c) *This section shall remain in effect only until January 1, 2011,*
9 *and as of that date is repealed, unless a later enacted statute, that*
10 *is enacted before January 1, 2011, deletes or extends that date.*

11 SEC. 4. Section 186.33 is added to the Penal Code, to read:

12 186.33. (a) Any person required to register pursuant to Section
13 186.30 who knowingly violates any of its provisions is guilty of a
14 misdemeanor.

15 (b) (1) Any person who knowingly fails to register pursuant to
16 Section 186.30 and is subsequently convicted of, or any person
17 for whom a petition is subsequently sustained for a violation of,
18 any of the offenses specified in Section 186.30, shall be punished
19 by an additional term of imprisonment in the state prison for 16
20 months, or two, or three years. The court shall order imposition
21 of the middle term unless there are circumstances in aggravation
22 or mitigation. The court shall state its reasons for the enhancement
23 choice on the record at the time of sentencing.

24 (2) The existence of any fact bringing a person under this
25 subdivision shall be alleged in the information, indictment, or
26 petition, and be either admitted by the defendant or minor in open
27 court, or found to be true or not true by the trier of fact.

28 (c) *This section shall become operative on January 1, 2011.*

29 ~~SEC. 3.~~

30 SEC. 5. Section 1170.1 of the Penal Code is amended to read:

31 1170.1. (a) Except as otherwise provided by law, and subject
32 to Section 654, when any person is convicted of two or more
33 felonies, whether in the same proceeding or court or in different
34 proceedings or courts, and whether by judgment rendered by the
35 same or by a different court, and a consecutive term of
36 imprisonment is imposed under Sections 669 and 1170, the
37 aggregate term of imprisonment for all these convictions shall be
38 the sum of the principal term, the subordinate term, and any
39 additional term imposed for applicable enhancements for prior
40 convictions, prior prison terms, and Section 12022.1. The principal

1 term shall consist of the greatest term of imprisonment imposed
2 by the court for any of the crimes, including any term imposed for
3 applicable specific enhancements. The subordinate term for each
4 consecutive offense shall consist of one-third of the middle term
5 of imprisonment prescribed for each other felony conviction for
6 which a consecutive term of imprisonment is imposed, and shall
7 include one-third of the term imposed for any specific
8 enhancements applicable to those subordinate offenses.

9 (b) If a person is convicted of two or more violations of
10 kidnapping, as defined in Section 207, involving separate victims,
11 the subordinate term for each consecutive offense of kidnapping
12 shall consist of the full middle term and shall include the full term
13 imposed for specific enhancements applicable to those subordinate
14 offenses.

15 (c) In the case of any person convicted of one or more felonies
16 committed while the person is confined in a state prison or is
17 subject to reimprisonment for escape from custody and the law
18 either requires the terms to be served consecutively or the court
19 imposes consecutive terms, the term of imprisonment for all the
20 convictions that the person is required to serve consecutively shall
21 commence from the time the person would otherwise have been
22 released from prison. If the new offenses are consecutive with each
23 other, the principal and subordinate terms shall be calculated as
24 provided in subdivision (a). This subdivision shall be applicable
25 in cases of convictions of more than one offense in the same or
26 different proceedings.

27 (d) When the court imposes a prison sentence for a felony
28 pursuant to Section 1170 or subdivision (b) of Section 1168, the
29 court shall also impose, in addition and consecutive to the offense
30 of which the person has been convicted, the additional terms
31 provided for any applicable enhancements. If an enhancement is
32 punishable by one of three terms, the court shall, in its discretion,
33 ~~impose one of those terms~~ *the term that best serves the interest of*
34 *justice*, and state the reasons for its sentence choice on the record
35 at the time of sentencing. The court shall also impose any other
36 additional term that the court determines in its discretion or as
37 required by law shall run consecutive to the term imposed under
38 Section 1170 or subdivision (b) of Section 1168. In considering
39 the imposition of the additional term, the court shall apply the
40 sentencing rules of the Judicial Council.

1 (e) All enhancements shall be alleged in the accusatory pleading
2 and either admitted by the defendant in open court or found to be
3 true by the trier of fact.

4 (f) When two or more enhancements may be imposed for being
5 armed with or using a dangerous or deadly weapon or a firearm
6 in the commission of a single offense, only the greatest of those
7 enhancements shall be imposed for that offense. This subdivision
8 shall not limit the imposition of any other enhancements applicable
9 to that offense, including an enhancement for the infliction of great
10 bodily injury.

11 (g) When two or more enhancements may be imposed for the
12 infliction of great bodily injury on the same victim in the
13 commission of a single offense, only the greatest of those
14 enhancements shall be imposed for that offense. This subdivision
15 shall not limit the imposition of any other enhancements applicable
16 to that offense, including an enhancement for being armed with
17 or using a dangerous or deadly weapon or a firearm.

18 (h) For any violation of an offense specified in Section 667.6,
19 the number of enhancements that may be imposed shall not be
20 limited, regardless of whether the enhancements are pursuant to
21 this section, Section 667.6, or some other provision of law. Each
22 of the enhancements shall be a full and separately served term.

23 (i) *This section shall remain in effect only until January 1, 2011,*
24 *and as of that date is repealed, unless a later enacted statute, that*
25 *is enacted before January 1, 2011, deletes or extends that date.*

26 SEC. 6. Section 1170.1 is added to the Penal Code, to read:

27 1170.1. (a) *Except as otherwise provided by law, and subject*
28 *to Section 654, when any person is convicted of two or more*
29 *felonies, whether in the same proceeding or court or in different*
30 *proceedings or courts, and whether by judgment rendered by the*
31 *same or by a different court, and a consecutive term of*
32 *imprisonment is imposed under Sections 669 and 1170, the*
33 *aggregate term of imprisonment for all these convictions shall be*
34 *the sum of the principal term, the subordinate term, and any*
35 *additional term imposed for applicable enhancements for prior*
36 *convictions, prior prison terms, and Section 12022.1. The principal*
37 *term shall consist of the greatest term of imprisonment imposed*
38 *by the court for any of the crimes, including any term imposed for*
39 *applicable specific enhancements. The subordinate term for each*
40 *consecutive offense shall consist of one-third of the middle term*

1 of imprisonment prescribed for each other felony conviction for
2 which a consecutive term of imprisonment is imposed, and shall
3 include one-third of the term imposed for any specific
4 enhancements applicable to those subordinate offenses.

5 (b) If a person is convicted of two or more violations of
6 kidnapping, as defined in Section 207, involving separate victims,
7 the subordinate term for each consecutive offense of kidnapping
8 shall consist of the full middle term and shall include the full term
9 imposed for specific enhancements applicable to those subordinate
10 offenses.

11 (c) In the case of any person convicted of one or more felonies
12 committed while the person is confined in a state prison or is
13 subject to reimprisonment for escape from custody and the law
14 either requires the terms to be served consecutively or the court
15 imposes consecutive terms, the term of imprisonment for all the
16 convictions that the person is required to serve consecutively shall
17 commence from the time the person would otherwise have been
18 released from prison. If the new offenses are consecutive with each
19 other, the principal and subordinate terms shall be calculated as
20 provided in subdivision (a). This subdivision shall be applicable
21 in cases of convictions of more than one offense in the same or
22 different proceedings.

23 (d) When the court imposes a prison sentence for a felony
24 pursuant to Section 1170 or subdivision (b) of Section 1168, the
25 court shall also impose, in addition and consecutive to the offense
26 of which the person has been convicted, the additional terms
27 provided for any applicable enhancements. If an enhancement is
28 punishable by one of three terms, the court shall impose the middle
29 term unless there are circumstances in aggravation or mitigation,
30 and state the reasons for its sentence choice, other than the middle
31 term, on the record at the time of sentencing. The court shall also
32 impose any other additional term that the court determines in its
33 discretion or as required by law shall run consecutive to the term
34 imposed under Section 1170 or subdivision (b) of Section 1168.
35 In considering the imposition of the additional term, the court
36 shall apply the sentencing rules of the Judicial Council.

37 (e) All enhancements shall be alleged in the accusatory pleading
38 and either admitted by the defendant in open court or found to be
39 true by the trier of fact.

1 (f) When two or more enhancements may be imposed for being
2 armed with or using a dangerous or deadly weapon or a firearm
3 in the commission of a single offense, only the greatest of those
4 enhancements shall be imposed for that offense. This subdivision
5 shall not limit the imposition of any other enhancements applicable
6 to that offense, including an enhancement for the infliction of great
7 bodily injury.

8 (g) When two or more enhancements may be imposed for the
9 infliction of great bodily injury on the same victim in the
10 commission of a single offense, only the greatest of those
11 enhancements shall be imposed for that offense. This subdivision
12 shall not limit the imposition of any other enhancements applicable
13 to that offense, including an enhancement for being armed with
14 or using a dangerous or deadly weapon or a firearm.

15 (h) For any violation of an offense specified in Section 667.6,
16 the number of enhancements that may be imposed shall not be
17 limited, regardless of whether the enhancements are pursuant to
18 this section, Section 667.6, or some other provision of law. Each
19 of the enhancements shall be a full and separately served term.

20 (i) This section shall become operative on January 1, 2011.

21 ~~SEC. 4.~~

22 SEC. 7. Section 12021.5 of the Penal Code is amended to read:

23 12021.5. (a) Every person who carries a loaded or unloaded
24 firearm on his or her person, or in a vehicle, during the commission
25 or attempted commission of any street gang crimes described in
26 subdivision (a) or (b) of Section 186.22, shall, upon conviction of
27 the felony or attempted felony, be punished by an additional term
28 of imprisonment in the state prison for one, two, or three years ~~in~~
29 ~~the court's discretion~~. The court shall *select the sentence*
30 *enhancement which, in the court's discretion, best serves the*
31 *interests of justice and shall state the reasons for its enhancement*
32 *choice on the record at the time of sentence, in accordance with*
33 *the provisions of subdivision (d) of Section 1170.1.*

34 (b) Every person who carries a loaded or unloaded firearm
35 together with a detachable shotgun magazine, a detachable pistol
36 magazine, a detachable magazine, or a belt-feeding device on his
37 or her person, or in a vehicle, during the commission or attempted
38 commission of any street gang crimes described in subdivision (a)
39 or (b) of Section 186.22, shall, upon conviction of the felony or
40 attempted felony, be punished by an additional term of

1 imprisonment in the state prison for two, three, or four years ~~in~~
2 ~~the court's discretion~~. The court shall *select the sentence*
3 *enhancement which, in the court's discretion, best serves the*
4 *interests of justice and shall state the reasons for its enhancement*
5 choice on the record at the time of sentence, *in accordance with*
6 *the provisions of subdivision (d) of Section 1170.1.*

7 (c) As used in this section, the following definitions shall apply:

8 (1) "Detachable magazine" means a device that is designed or
9 redesigned to do all of the following:

10 (A) To be attached to a rifle that is designed or redesigned to
11 fire ammunition.

12 (B) To be attached to, and detached from, a rifle that is designed
13 or redesigned to fire ammunition.

14 (C) To feed ammunition continuously and directly into the
15 loading mechanism of a rifle that is designed or redesigned to fire
16 ammunition.

17 (2) "Detachable pistol magazine" means a device that is
18 designed or redesigned to do all of the following:

19 (A) To be attached to a semiautomatic firearm that is not a rifle
20 or shotgun that is designed or redesigned to fire ammunition.

21 (B) To be attached to, and detached from, a firearm that is not
22 a rifle or shotgun that is designed or redesigned to fire ammunition.

23 (C) To feed ammunition continuously and directly into the
24 loading mechanism of a firearm that is not a rifle or a shotgun that
25 is designed or redesigned to fire ammunition.

26 (3) "Detachable shotgun magazine" means a device that is
27 designed or redesigned to do all of the following:

28 (A) To be attached to a firearm that is designed or redesigned
29 to fire a fixed shotgun shell through a smooth or rifled bore.

30 (B) To be attached to, and detached from, a firearm that is
31 designed or redesigned to fire a fixed shotgun shell through a
32 smooth bore.

33 (C) To feed fixed shotgun shells continuously and directly into
34 the loading mechanism of a firearm that is designed or redesigned
35 to fire a fixed shotgun shell.

36 (4) "Belt-feeding device" means a device that is designed or
37 redesigned to continuously feed ammunition into the loading
38 mechanism of a machinegun or a semiautomatic firearm.

39 (5) "Rifle" shall have the same meaning as specified in
40 paragraph (20) of subdivision (c) of Section 12020.

1 (6) “Shotgun” shall have the same meaning as specified in
2 paragraph (21) of subdivision (c) of Section 12020.

3 (d) *This section shall remain in effect only until January 1, 2011,*
4 *and as of that date is repealed, unless a later enacted statute, that*
5 *is enacted before January 1, 2011, deletes or extends that date.*

6 SEC. 8. Section 12021.5 is added to the Penal Code, to read:

7 12021.5. (a) *Every person who carries a loaded or unloaded*
8 *firearm on his or her person, or in a vehicle, during the commission*
9 *or attempted commission of any street gang crimes described in*
10 *subdivision (a) or (b) of Section 186.22, shall, upon conviction of*
11 *the felony or attempted felony, be punished by an additional term*
12 *of imprisonment in the state prison for one, two, or three years in*
13 *the court’s discretion. The court shall impose the middle term*
14 *unless there are circumstances in aggravation or mitigation. The*
15 *court shall state the reasons for its enhancement choice on the*
16 *record at the time of sentence.*

17 (b) *Every person who carries a loaded or unloaded firearm*
18 *together with a detachable shotgun magazine, a detachable pistol*
19 *magazine, a detachable magazine, or a belt-feeding device on his*
20 *or her person, or in a vehicle, during the commission or attempted*
21 *commission of any street gang crimes described in subdivision (a)*
22 *or (b) of Section 186.22, shall, upon conviction of the felony or*
23 *attempted felony, be punished by an additional term of*
24 *imprisonment in the state prison for two, three, or four years in*
25 *the court’s discretion. The court shall impose the middle term*
26 *unless there are circumstances in aggravation or mitigation. The*
27 *court shall state the reasons for its enhancement choice on the*
28 *record at the time of sentence.*

29 (c) *As used in this section, the following definitions shall apply:*

30 (1) *“Detachable magazine” means a device that is designed or*
31 *redesigned to do all of the following:*

32 (A) *To be attached to a rifle that is designed or redesigned to*
33 *fire ammunition.*

34 (B) *To be attached to, and detached from, a rifle that is designed*
35 *or redesigned to fire ammunition.*

36 (C) *To feed ammunition continuously and directly into the*
37 *loading mechanism of a rifle that is designed or redesigned to fire*
38 *ammunition.*

39 (2) *“Detachable pistol magazine” means a device that is*
40 *designed or redesigned to do all of the following:*

1 (A) *To be attached to a semiautomatic firearm that is not a rifle*
2 *or shotgun that is designed or redesigned to fire ammunition.*

3 (B) *To be attached to, and detached from, a firearm that is not*
4 *a rifle or shotgun that is designed or redesigned to fire ammunition.*

5 (C) *To feed ammunition continuously and directly into the*
6 *loading mechanism of a firearm that is not a rifle or a shotgun*
7 *that is designed or redesigned to fire ammunition.*

8 (3) *“Detachable shotgun magazine” means a device that is*
9 *designed or redesigned to do all of the following:*

10 (A) *To be attached to a firearm that is designed or redesigned*
11 *to fire a fixed shotgun shell through a smooth or rifled bore.*

12 (B) *To be attached to, and detached from, a firearm that is*
13 *designed or redesigned to fire a fixed shotgun shell through a*
14 *smooth bore.*

15 (C) *To feed fixed shotgun shells continuously and directly into*
16 *the loading mechanism of a firearm that is designed or redesigned*
17 *to fire a fixed shotgun shell.*

18 (4) *“Belt-feeding device” means a device that is designed or*
19 *redesigned to continuously feed ammunition into the loading*
20 *mechanism of a machinegun or a semiautomatic firearm.*

21 (5) *“Rifle” shall have the same meaning as specified in*
22 *paragraph (20) of subdivision (c) of Section 12020.*

23 (6) *“Shotgun” shall have the same meaning as specified in*
24 *paragraph (21) of subdivision (c) of Section 12020.*

25 (d) *This section shall become operative on January 1, 2011.*

26 ~~SEC. 5.~~

27 *SEC. 9.* Section 12022.2 of the Penal Code is amended to read:

28 12022.2. (a) Any person who, while armed with a firearm in
29 the commission or attempted commission of any felony, has in his
30 or her immediate possession ammunition for the firearm designed
31 primarily to penetrate metal or armor, shall upon conviction of
32 that felony or attempted felony, in addition and consecutive to the
33 punishment prescribed for the felony or attempted felony, be
34 punished by an additional term of 3, 4, or 10 years. The court shall
35 *select the sentence enhancement which, in the court’s discretion,*
36 *best serves the interests of justice and shall state the reasons for*
37 *its enhancement choice on the record at the time of the sentence*
38 *in accordance with the provisions of subdivision (d) of Section*
39 *1170.1.*

(b) Any person who wears a body vest in the commission or attempted commission of a violent offense, as defined in subdivision (b) of Section 12021.1, shall, upon conviction of that felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or five years. The court shall *select the sentence enhancement which, in the court's discretion, best serves the interests of justice and shall state the reasons for its enhancement* choice on the record at the time of the sentence *in accordance with the provisions of subdivision (d) of Section 1170.1.*

(c) As used in this section, "body vest" means any bullet-resistant material intended to provide ballistic and trauma protection for the wearer.

(d) *This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.*

SEC. 10. Section 12022.2 is added to the Penal Code, to read:

12022.2. (a) Any person who, while armed with a firearm in the commission or attempted commission of any felony, has in his or her immediate possession ammunition for the firearm designed primarily to penetrate metal or armor, shall upon conviction of that felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony, be punished by an additional term of three, four, or 10 years. The court shall order the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of the sentence.

(b) Any person who wears a body vest in the commission or attempted commission of a violent offense, as defined in subdivision (b) of Section 12021.1, shall, upon conviction of that felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or five years. The court shall order the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of the sentence.

1 (c) As used in this section, “body vest” means any
2 bullet-resistant material intended to provide ballistic and trauma
3 protection for the wearer.

4 (d) This section shall become operative on January 1, 2011.

5 ~~SEC. 6.~~

6 SEC. 11. Section 12022.4 of the Penal Code is amended to
7 read:

8 12022.4. (a) Any person who, during the commission or
9 attempted commission of a felony, furnishes or offers to furnish
10 a firearm to another for the purpose of aiding, abetting, or enabling
11 that person or any other person to commit a felony shall, in addition
12 and consecutive to the punishment prescribed by the felony or
13 attempted felony of which the person has been convicted, be
14 punished by an additional term of one, two, or three years in the
15 state prison. The court shall *select the sentence enhancement which,*
16 *in the court’s discretion, best serves the interests of justice and*
17 *shall state the reasons for its enhancement choice on the record at*
18 *the time of the sentence, in accordance with the provisions of*
19 *subdivision (d) of Section 1170.1.* The additional term provided
20 in this section shall not be imposed unless the fact of the furnishing
21 is charged in the accusatory pleading and admitted or found to be
22 true by the trier of fact.

23 (b) *This section shall remain in effect only until January 1, 2011,*
24 *and as of that date is repealed, unless a later enacted statute, that*
25 *is enacted before January 1, 2011, deletes or extends that date.*

26 SEC. 12. Section 12022.4 is added to the Penal Code, to read:

27 12022.4. (a) Any person who, during the commission or
28 attempted commission of a felony, furnishes or offers to furnish a
29 firearm to another for the purpose of aiding, abetting, or enabling
30 that person or any other person to commit a felony shall, in
31 addition and consecutive to the punishment prescribed by the
32 felony or attempted felony of which the person has been convicted,
33 be punished by an additional term of one, two, or three years in
34 the state prison. The court shall order the middle term unless there
35 are circumstances in aggravation or mitigation. The court shall
36 state the reasons for its enhancement choice on the record at the
37 time of the sentence. The additional term provided in this section
38 shall not be imposed unless the fact of the furnishing is charged
39 in the accusatory pleading and admitted or found to be true by the
40 trier of fact.

- 1 **(b)** *This section shall become operative on January 1, 2011.*

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